

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DONALD C. HUTCHINS

Plaintiff

v.

CARDIAC SCIENCE, INC., et. al.,

Defendants

Civil Action: **04-30126-MAP**

FILED
IN CLERK'S OFFICE
2005 DEC 29 A 11:31
U.S. DISTRICT COURT
DISTRICT OF MASS.

**AMENDED MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S MOTION FOR JOINDER UNDER
R. 19(a)(1) AND R. 19(a)(2)(ii) OF CIVIL PROCEDURE**

The Plaintiff, Donald C. Hutchins ("Hutchins") files this memorandum in support of the Plaintiff's Motion For Joinder Under R. 19(a)(1) and R. (a)(2)(ii) of Civil Procedure.

I. SUMMARY OF POSITION

A letter from Kevin W. Kirsch, Esq., an employee of Stradling Yocca Carlson & Rauth, to Attorney Gary Martinelli is attached herein as Exhibit A. In answer to Hutchins' attempt to resolve issues involving the Asset Purchase Agreement between the Compliant Corporation and Cardiac Science, Inc., Attorney Kirsch states, "Cardiac Science is already reviewing the publication of the current threat for possible action against Mr. Hutchins." This belligerent response from Stradling Yocca Carlson & Rauth

presented Hutchins with no alternative but to protect his interests by filing Civil Action 04-30126-MAP.

Discovery in this action and information available through public documents such as filings with the Security and Exchange Commission, indicate that Stradling Yocca Carlson & Rauth represented Cardiac Science in the following: (1) Asset Purchase Agreement among Cardiac Science and Compliant, (2) Demand for Indemnity from Cardiac Science to Compliant (June 28, 2004), (3) Sale Agreement between Cardiac Science and Quinton.

For each of these Stradling Yocca Carlson & Rauth provided opinions and due diligence, which in some instances were flawed and intentionally misleading. This has caused hardship to the parties involved in this action. Hutchins is the victim of these inaccuracies as they relate to issues involved in Civil Action 04-30126-MAP. For example, Stradling Yocca Carlson & Rauth did not disclose this litigation or Hutchins' licensed properties to Quinton in the Sale Agreement. As a consequence, the successor to the dissolved Cardiac Science has not been made known to Hutchins or the other parties to this action. The intransigence and foot-dragging of Stradling Yocca Carlson & Rauth has impeded progress in this action and allowed the dissolved Cardiac Science, Inc. to avoid contractual obligations and the damage claims by Hutchins.

II. ARGUMENT

The standard used to consider a request for joinder is found in Rule 19 of the Code of Civil Procedure. The tests are:

“(1) in the person's absence complete relief cannot be accorded among the parties or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the

persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.”

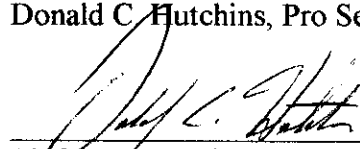
Hutchins, Cardiac Science Inc. and the Compliant Corporation meet the test that in absence of Stradling Yocca Carlson & Rauth relief can not be accorded among the parties.

Cardiac Science, Inc., the Compliant Corporation and Hutchins meet the test that in the absence of Stradling Yocca Carlson & Rauth each will be subject to inconsistent obligations by reason of the claimed interest.

CONCLUSION

For all of the foregoing reasons, the Plaintiff's Motion to order Stradling Yocca Carlson & Rauth be made a party to Civil Action: 04-30126-MAP should be granted.

The Plaintiff
Donald C. Hutchins, Pro Se



1047 Longmeadow Street
Longmeadow, Massachusetts 01106
(413) 567-0606

Dated: December 9, 2005

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DONALD C. HUTCHINS

Plaintiff

v.

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ORDER FOR JOINDER

The Court makes the following findings and orders that Stradling Yocca Carlson & Rauth, a professional corporation, 660 Newport Center Drive, Suite 1600, Newport Beach, CA 92669, be joined as a Defendant to this action under Rule 19 (a)(1) and Rule 19(a)(2)(ii) of civil procedure.

The Court finds that without the joining of the Stradling Yocca Carlson & Rauth, complete relief cannot be accorded among the parties and the absence of Stradling Yocca Carlson & Rauth will leave any of the persons already parties subject to a substantial risk of incurring inconsistent obligations by reason of the claimed interest.

Justice of the United States District Court

Dated: _____

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**CERTIFICATION UNDER
LOCAL RULE 15.1 BY
DONALD C. HUTCHINS**

NOW COMES DONALD C. HUTCHINS who states that:

In accordance with Local Rule 15.1, ADDITION OF NEW PARTIES, that I shall file PLAINTIFF'S AMENDED MOTION FOR JOINDER on December 20, 2005.

December 9, 2005

DONALD C. HUTCHINS

CERTIFICATE OF SERVICE

I, Donald C. Hutchins, 1047 Longmeadow Street, Longmeadow, Massachusetts 01106, hereby certify that I had served by Richard Moriarty, 43 Greenacre Ave., Longmeadow, Massachusetts 01106, a copy of Plaintiff's Motion For Joinder and the foregoing Certificate under Local Rule 15.1 on the appropriate party by UPS Overnight to:

Stradling Yocca Carlson & Rauth, 660 Newport Center Drive, Suite 1600,
Newport Beach, CA 92660.